

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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UNITED STATES OF AMERICA,	)	
	)	
v.	)	Criminal No. 98-0057 (PLF)
	)	
MARIA HSIA,	)	
	)	
Defendant.	)	
_____	)	

MEMORANDUM OPINION AND ORDER

This matter is before the Court on defendant's Motion No. 11 (to Dismiss Indictment Because It Is Tainted). In this motion the defendant, Maria Hsia, argues that the government has obtained and used information protected by the attorney-client and joint defense privileges in violation of her rights. Specifically, she alleges that her former attorney, Brian Sun and his colleagues at the firm of O'Neill, Lysaght & Sun, in negotiating for immunity for certain of their other clients, shared information with the government provided by Ms. Hsia, either directly to Mr. Sun when he represented her or through her subsequently retained attorney, Gordon Greenberg of the firm of Sheppard, Mullin, Richter & Hampton, as part of a joint defense agreement. She maintains that the government acquired and used this information with the knowledge that a joint defense existed and that the evidence provided by the O'Neill firm to the prosecutors and ultimately to the grand jury therefore was tainted.

Ms. Hsia also argues that the government obtained evidence from another lawyer, Hillary Goldstone, who represented Ms. Hsia on other matters, subpoenaed Ms. Goldstone to the grand jury and presented her testimony to the grand jury, knowing of the

attorney-client relationship between Ms. Goldstone and Ms. Hsia. She maintains that the government's misconduct in receiving and using the privileged information requires dismissal of the indictment. Alternatively, she has requested an evidentiary hearing to further explore these issues.

The Court originally scheduled a hearing on defendant's motion for July 28, 1998. On the request of the government, however, it postponed that hearing and stayed the effective date for compliance with subpoenas to potential witnesses issued by Ms. Hsia. See Order of July 22, 1998. Subsequent to issuing that order, the Court received and considered both an ex parte, in camera submission from counsel for Ms. Hsia in support of the motion to dismiss and an order issued by Chief Judge Johnson that was originally filed under seal in connection with the grand jury proceeding in this matter. In that order, the Chief Judge denied Ms. Hsia's motion to stay the grand jury investigation pending a determination of the very issues presented here and denied her motion to disqualify the prosecutors. Ms. Hsia's ex parte submission consists of a four-page proffer as to what her evidence would be at a hearing on the motion to dismiss and a declaration of Maria Hsia, dated January 20, 1998, which is the same declaration that had earlier been provided to the Chief Judge.

The attorney-client privilege protects from forced disclosure communications between a client and her attorney. It is a personal privilege that may be waived only by the client. The joint defense privilege is an extension of the attorney-client privilege that has been recognized by the courts and protects from forced disclosure communications between two or more parties and/or their respective counsel if they are participating in a joint defense agreement. The questions in this case are (1) whether Brian Sun or his colleagues at the

O'Neill firm disclosed to the government without Ms. Hsia's permission any information that Ms. Hsia provided to the firm during the period when it represented Ms. Hsia; (2) whether there was a joint defense agreement between the O'Neill firm and Mr. Greenberg and whether the O'Neill firm or Mr. Greenberg or his firm provided any privileged information to the government or the grand jury that was provided by Ms. Hsia to either firm during the period of the joint defense agreement; and (3) whether Ms. Goldstone was asked any questions by the prosecutors or the grand jury which touched upon her attorney-client relationship with Ms. Hsia and which elicited any privileged information.<sup>1</sup>

In view of the submissions before the Court, including Ms. Hsia's ex parte, in camera submission, her January 20, 1998 declaration, and Chief Judge Johnson's order of January 21, 1998, it is apparent that Ms. Hsia has an uphill battle to demonstrate that the O'Neill law firm, Mr. Greenberg or his firm or Ms. Goldstone breached their professional obligations to her or that the government relied upon privileged information in pursuing its investigation or in presenting its case to the grand jury. Nevertheless, the Court concludes that an evidentiary hearing is required to permit Ms. Hsia to develop evidence necessary to sustain her charges. The Court also agrees with the government, however, that if there is to be a

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<sup>1</sup> With respect to Ms. Goldstone, Ms. Hsia's proffer is particularly unilluminating. It may be that testimony from Ms. Goldstone had nothing to do with attorney-client conversations between her and Ms. Hsia. To the extent it did relate to such conversations with Ms. Hsia, it may have been based on the fraud crime exception to the attorney-client privilege inasmuch as Ms. Goldstone has been identified as an unindicted co-conspirator. If that is the case -- indeed, if any arguably privileged conversations with Ms. Hsia were the subject of inquiry -- it would have been incumbent on Ms. Goldstone to advise Ms. Hsia or her lawyer that she had been subpoenaed so that they could assert privilege on behalf of Ms. Hsia.

hearing the inquiry should begin with the question of whether privileged information was provided to the government in the first place, an inquiry that does not require the testimony of government attorneys and investigators. Rather, it is appropriate in the first instance to hear the sworn testimony under oath of representatives of the O'Neill law firm -- particularly Brian Sun, Frederick Friedman and Stacy Cohen -- and Mr. Greenberg and Ms. Goldstone.<sup>2</sup>

Furthermore, the Court does not believe, at least at this point, that the hearing need be closed to the public, although it is prepared to hear more on that issue either from Mrs. Hsia or from counsel for any of the witnesses who will testify at the hearing. Accordingly, it is hereby

ORDERED that counsel for the government and counsel for Ms. Hsia, after consultation with Brian Sun, Frederick Friedman, Stacy Cohen, Gordon Greenberg, and Hillary Goldstone (or their counsel), shall agree upon a mutually convenient date for such a hearing and promptly advise the Court. The Court is available for such a hearing on September 17, 22, or 23, 1998 or October 1 or 2, 1998; and it is

FURTHER ORDERED that the effective date for compliance with other outstanding subpoenas remains stayed until further order of the Court.

SO ORDERED.

DATE:

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PAUL L. FRIEDMAN  
United States District Judge

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<sup>2</sup> Counsel for Ms. Hsia may subpoena others from the O'Neill and Sheppard firms to the extent she believes in good faith that they have information relevant to these threshold questions.